Maswin bt Ripit & 5 Ors or persons occupying the land held under title GM 54, Lot No 448, Mukim Batu, Kepong Rly Line 8th Mile, Wilayah Persekutuan Kuala Lumpur and GM 57, Lot No 449 Mukim Batu, Segambut, Wilayah Persekutuan Kuala Lumpur v New York Empire Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(A)-1747–10 OF 2015

LIM YEE LAN, BADARIAH SAHIMID AND HARMINDAR SINGH JJCA

28 SEPTEMBER 2016

Civil Procedure — Locus standi — Applicant not party to originating summons — Respondent filed for possession of land — Appellants' application to be added as parties dismissed — Appellant filed fresh action to set aside respondents' action — Action dismissed by trial judge — Whether fresh application to be added as parties filed by appellants — Whether appellant had locus standi to file application to set aside — Res judicata — Decision, finality of earlier decision — Whether doctrine of res judicata applied against appellants

Land Law — Possession — Recovery of — Respondents filed action for possession of land against appellants — Appellants' application to set aside respondents' action dismissed by trial judge — Appellants appealed against decision — Whether there was appealable error that warrant appellate intervention — Rules of Court 2012 O 89

The respondents had filed originating summons ('encl 1') pursuant to O 89 of the Rules of Court 2012 for possession of lands known as Lots 448 and 449 which were occupied by the appellants. In response, the appellant had applied via encl 38 to set aside encl 1, and via encl 21 to be added as parties, nevertheless, encls 21 and 38 were both dismissed and encl 1 was allowed by the trial court. Subsequently, the appellants' appeal against the said decision was withdrawn and struck out without liberty to file afresh. The appellants then filed a fresh encl 38, however, similarly, the application was dismissed, hence this appeal. From the evidence, the affidavit in support for the fresh encl 38 was affirmed by one Viknesh a/l Krishnan on behalf of the sixth appellants. The issues for court's decision in the present appeal were with regard to whether appellant had locus standi to file encl 38 and whether the doctrine of res judicata applied against the appellants.

Held, dismissing the appeal and affirming the order of the High Court:

(1) In the instant case, it was not disputed that the appellants had failed to specifically identify themselves. Beside the deponent of the affidavits, none of the identities of the appellants were revealed. By merely filing the memorandum of appearance was insufficient for the parties to have a right of hearing. Since there was no application to be added as parties, the appellants had no legal standing in the proceedings (see para 24).

(2) It is trite law that the res judicata principle is premised on giving finality to judicial decisions. The purpose of achieving finality in litigation will be undermined if parties can willy-nilly re-open litigation after a matter had been decided between the parties to a suit. In the present case, encl 21 was dismissed and the subsequent appeal thereof was withdrawn. The appellants could not therefore re-apply encl 21 as it would be barred by the doctrine of res judicata. In addition, the various other issues raised by the appellants in the present appeal could had been raised in the earlier proceedings, thus, they were also barred in the present appeal by res judicata. Based on the circumstances, there was no appealable error on the part of the High Court to warrant appellate intervention (see paras 25, 28, 30 & 32).

[Bahasa Malaysia summary

Responden-responden memfailkan saman pemula ('lampiran 1') berikutan A 89 Kaedah-Kaedah Mahkamah 2012 bagi milikan tanah yang dikenali sebagai Lot 448 dan 449 yang mana dihuni oleh perayu-perayu. Dalam menjawab, perayu telah memohon melalui lampiran 38 untuk mengetepikan lampiran 1, dan melalui lampiran 21 untuk dimasukkan sebagai pihak-pihak, walau bagaimanapun, lampiran 21 dan 38 kedua-duanya ditolak dan lampiran 1 dibenarkan oleh mahkamah perbicaraan. Kemudiannya, rayuan perayu terhadap keputusan tersebut ditarik balik dan dibatalkan tanpa kebebasan untuk memfailkan yang baru. Perayu-perayu kemudiannya memfailkan lampiran 38 baru, tetapi, sama juga, permohonan ditolak, maka rayuan ini. Daripada keterangan, afidavit sokongan untuk lampiran 38 yang baru disahkan oleh seorang yang bernama Viknesh a/l Krishnan bagi pihak perayu keenam. Isu-isu bagi keputusan mahkamah dalam rayuan ini adalah berkaitan sama ada perayu mempunyai locus standi untuk memfailkan lampiran 38 dan sama ada doktrin res judicata digunapakai terhadap perayu-perayu.

Diputuskan, menolak rayuan dan mengesahkan perintah Mahkamah Tinggi:

(1) Dalam kes ini, ia tidak dipertikaikan bahawa perayu-perayu telah gagal untuk secara spesifik mengenalkan diri mereka. Selain deponen afidavit-afidavit, tidak satu daripada identiti perayu-perayu didedahkan. Dengan hanya memfailkan memorandum kehadiran tidak mencukupi bagi pihak-pihak untuk mendapat hak pendengaran. Memandangkan tidak terdapat permohonan untuk dimasukkan sebagai pihak-pihak, perayu-perayu tidak mempunyai kedudukan undang-undang dalam

prosiding tersebut (lihat perenggan 24).

(2) Ia adalah undang-undang nyata bahawa prinsip res judicata adalah berdasarkan ke atas memberikan kemuktamadan kepada keputusan kehakiman. Tujuan mencapai kemuktamadan dalam litigasi akan menjadi lemah jika pihak-pihak suka atau tidak membuka semula litigasi selepas perkara telah diputuskan di antara pihak-pihak kepada guaman. Dalam kes ini, lampiran 21 ditolak dan rayuan kemudiannya ditarik balik. Perayu-perayu dengan itu tidak boleh memohon semula lampiran 21 kerana ia akan dihalang oleh doktrin res judicata. Selanjutnya, pelbagai isu yang lain dibangkitkan oleh perayu-perayu dalam rayuan ini sepatutnya boleh dibangkitkan di dalam prosiding sebelumnya, oleh itu, ia juga dihalang di dalam rayuan ini oleh res judicata. Berdasarkan keadaan, tidak terdapat kesilapan yang boleh dirayukan oleh Mahkamah Tinggi untuk mewajarkan campur tangan Mahkamah Rayuan (lihat perenggan 25, 28, 30 & 32).]

Notes

For a case on applicant not party to originating summons, see 2(3) *Mallal's Digest* (5th Ed, 2015) para 6092.

For cases on recovery of, see 8(3) Mallal's Digest (5th Ed, 2015) paras 4260–4276.

Cases referred to

Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd [2001] 4 MLJ 346, CA (refd)

Hartecom JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57, CA (refd)

Orang-orang yang menduduki rumah di bawah hakmilik Geran No 26977 Lot 4271, Johor Bahru v Punca Klasik Sdn Bhd & other appeals [1997] 3 MLJ 761, CA (refd)

Legislation referred to

Rules of Court 2012 O 89, O 89 r 5

Appeal from: Civil Trial No 24NCVC-778–05 of 2014 (High Court, Kuala Lumpur)

P Uthayakumar (Kumar Hashimah & Co) for the appellants.
Soo San San (Gabriel Daniel with her) (Paul Ong & Assoc) for the respondents.

Harmindar Singh JCA:

[1] This was an appeal against the decision of the High Court Kuala Lumpur given on 8 October 2015. The High Court had dismissed the application of the appellants here in encl 38 of that action. Essentially, the High Court had

refused to set aside the proceedings in the Originating Summons ('the OS') filed pursuant to O 89 of the Rules of Court 2012 ('the ROC 2012') for possession of land. For convenience, the parties would be referred to as they were in the High Court.

BACKGROUND FACTS

[2] A narration of the background facts is essential as there is some history in the proceedings between the parties.

[3] The plaintiffs in their capacity as registered proprietors had via the OS applied under O 89 of the ROC 2012, for possession of properties held under Hakmilik GM 54, Lot No 448, Mukim Batu, Kepong Rly Line 8th Mile, Wilayah Persekutuan Kuala Lumpur (Lot 448) and GM 57, Lot No 449, Mukim Batu, Segambut, Wilayah Persekutuan (Lot 449).

[4] The first plaintiff, New York Empire Sdn Bhd, is the registered proprietor of Lot 448, whilst the second plaintiff, Triple-H Auto Parts Sdn Bhd, is the registered proprietor of Lot 449.

[5] It was the case for the plaintiffs that the said two lots ('the said land') were occupied by the first to sixth defendants who were squatters and had illegally occupied the said land without the plaintiffs' consent and/or license. The sixth defendants were described as all persons in occupation of the said land but whose identity was unknown to the plaintiffs.

[6] What happened next was that 89 individuals filed their memorandum of appearance as being part of the sixth defendants in the OS through their solicitors, Messrs Reventharan & Assoc. The plaintiffs raised a preliminary objection that these 89 individuals had no locus standi to oppose the OS as they had not applied to be added as defendants under O 89 r 5 of the ROC 2012. For good measure, the plaintiffs also relied on the case of *Orang-orang yang menduduki rumah di bawah hakmilik Geran No 26977 Lot 4271, Johor Bahru v Punca Klasik Sdn Bhd & other appeals* [1997] 3 MLJ 761 ('Punca Klasik').

[7] The learned judicial commissioner, Puan Komathy Suppiah ('the JC') found merit in the plaintiffs' objection but however allowed the proposed defendants one day to make the application under O 89 r 5 of the ROC 2012. In the meantime, the first to fifth defendants and the other sixth defendants represented by another set of solicitors, Messrs Hisham Nen & Co, did not oppose the OS and had voluntarily moved out from the said land.

[8] Coming back to the 89 individuals forming the rest of the sixth defendants, an application to be added as parties to the OS ('encl 21') was filed by the 89 parties which included the Kuil Sri Nagakanni Amman Temple ('Nagakanni Temple') and the Kuil Sri Mahakarumariamman.

[9] Enclosure 21 was however dismissed by the learned JC as it was held that the applicants had failed to prove that they were in occupation of the land. In this regard, the learned JC said:

> 9. I accept the submission that for a person to be added as a defendant under this rule, it is an essential requirement that he must show that he is in occupation of the land. Having perused the affidavit in support, I am not satisfied that the proposed defendants have met the requirement of the rule 5. There is only a bare averment that they are in occupation of the land. There is no explanation as to why quit rent or TNB or SYABAS bills, were not exhibited to corroborate their claims. In my opinion the bare allegations made by the proposed defendants without more does not meet the requirements of the rule. As the proposed defendants have been given sufficient time and opportunities to defend their position, I do not think any further adjournment to enable them to file a supplementary affidavit is permissible.

[10] On the same day, the learned JC also allowed the OS ('encl 1') by order dated 8 September 2014.

[11] Dissatisfied with the aforesaid decision, the same parties ('the sixth defendant') filed notice of appeal dated 7 October 2014 to the Court of Appeal against the said decision. This appeal was however withdrawn and struck out on 19 January 2015 without liberty to file afresh. The appeal was withdrawn by the same solicitors, Messrs Reventharan & Assoc with agreed costs of RM10,000 to be paid to the respondents in that appeal.

ENCLOSURE 38

[12] Despite withdrawing the appeal, the same defendants nevertheless engaged new solicitors, Messrs Kumar Hashimah & Co. A fresh application in encl 38 was filed to set aside the proceedings under the OS.

[13] The relief sought in this application was as follows:

> (1) Satu Deklarasi bahawa Saman Pemula Mahkamah Tinggi Kuala Lumpur NO: 24NCVC-778-05/2014 yang bertarikh 28hb Mei 2014, Memorandum Kehadiran yang bertarikh 7hb Julai 2014, Perintah Mahkamah Tinggi Kuala Lumpur yang bertarikh 8hb September 2014, Permohonan untuk WRIT MILIKAN Perlaksanaan NO.37WP-11-06/2015, WRIT MILIKAN Perlaksanaan NO.37WP-11-06/2015 yang bertarikh 11 Jun 2015, NOTIS Bailif yang telah dilaksanakan pada 16.6.2016 dan 8.7.2015, Permohonan untuk WRIT MILIKAN Perlaksanaan NO.37WO-18-08/2015, WRIT

MILIKAN Perlaksanaan NO.37WP-18-08/2015 yang bertarikh 25hb Ogos 2015, NOTIS Bailif Mahkamah Tinggi Malaya, Kuala Lumpur Siti Aishah Bt Lasa yang bertarikh 17hb September 2015, Cadangan Perlaksanaan oleh Bailif pada 30hb September 2015 dan segala prosiding, Perintah-perintah dan Perintah Perlaksanaan yang berlanjutan daripadanya adalah Batal dan Tidak Sah daripada permulaannya lagi (*void ab initio*) oleh kerana ianya telah dimulakan dan difailkan oleh Plaintif-Plaintif yang adalah merupakan pemberi Surat Kuasa Wakil dan bukannya oleh Pemegang Surat Kuala Wakil.

(2) Bahawa Saman Pemula Mahkamah Tinggi Kuala Lumpur NO:24NCVC-778-05/2014 yang bertarikh 28hb Mei 2014 diketepikan/dibatalkan.

(3) Memorandum Kehadiran yang bertarikh 7hb Julai 2014 menurut Saman Pemula Mahkamah Tinggi Kuala Lumpur NO:24NCVC-778-05/2014 diketepikan/dibatalkan.

(4) Bahawa Perintah Mahkamah Tinggi Kuala Lumpur yang bertarikh 8hb September 2014 dalam GUAMAN SIVIL NO:24NCVC-778-05/2014 diketepikan/dibatalkan.

(5) Bahawa Permohonan untuk WRIT MILIKAN Perlaksanaan NO:373P-11-06/2015 diketepikan/dibatalkan.

(6) Bahawa WRIT MILIKAN Perlaksanaan NO.37WP-11-06/2015 yang bertarikh 11hb Jun 2015 menurut Perintah Mahkamah Tinggi Kuala Lumpur dalam GUAMAN SIVIL NO:24NCVC-778-05/2014 diketepikan/dibatalkan.

(7) Bahawa NOTIS Bailif yang telah dilaksanakan pada 16.6.2015 dan 8.7.2015 diketepikan/dibatalkan.

(8) Bahawa Permohonan untuk WRIT MILIKAN Perlaksanaan NO.37WP-18-08/2015 diketepikan/dibatalkan.

(9) Bahawa WRIT MILIKAN Perlaksanaan NO.37WP-18-08/2015 yang bertarikh 25hb Ogos 2015 menurut Perintah Mahkamah Tinggi Kuala Lumpur dalam GUAMAN SIVIL NO:24NCVC-778-05/2014 diketepikan/dibatalkan.

(10) Bahawa NOTIS Bailif Mahkamah Tinggi Malaya, Kuala Lumpur Siti Aishah Bt Lasa yang bertarikh 17hb September 2015 diketepikan/dibatalkan.

(11) Bahawa Cadangan Perlaksanaan oleh Bailif Siti Aishah Bt Lasa dan/atau mana-mana Bailif pada 30hb September 2015 dan seterusnya diketepikan/dibatalkan.

(12) Bahawa Defendan yang ke Enam termasuk Krishnan a/l Subramaniam (NO. K.P. 620621106455) sebagai Sami dan Penjaga 'Historical anda ancestral 130 year old' Kuil Sri Nagakanni Amman seperti yang dinyatakan dalam Memorandum Kehadiran yang bertarikh 7hb Julai

2014 diberikan Penangguhan Perlaksanaan selanjutnya (Stay of Execution) sehingga pelupusan muktamad Guaman Sivil ini.

(13) Bahawa Bailif Siti Aishah Bt Lasa dan/atau mana-mana Bailif dan/atau Plaintif-Plaintif dan/atau Polis Di Raja Malaysia dan/atau Dewan Bandaraya Kuala Lumpur dan/atau ajen/pengkhidmat/pekerja/ gangster Plaintif-Plaintif termasuk Raja a/l Govindaraju dilarang memasuki, mengusik (tamper), menghalang laluan masuk ke dan/atau merobohkan selanjutnya 'Historical and ancestral 130 year old" Kuil Sri Nagakanni Amman dan rumah-rumah/bangunan Defendan yang ke Enam seperti yang dinyatakan dalam Memorandum Kehadiran yang bertarikh 7hb Julai 2014 sehingga pelupusan muktamad Guaman Sivil ini.

(14) Satu Deklarasi bahawa perobohan 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman adalah melanggari dan melampaui 'Federal Territories Ministerial Statement in Parliament in 2008 that no more Hindu Temples would be demolished in the future (New Straits Times 11/7/2008 at page 13)'.

(15) Satu Deklarasi bahawa perobohan 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman dan rumah-rumah/bangunan tiap-tiap seorang Defendan yang ke Enam seperti dalam Memorandum Kehadiran yang bertarikh 7hb Julai 2014 adalah melanggari dan melampaui Perintah Mahkamah Tinggi Kuala Lumpur yang bertarikh 8hb September 2014 yang telah hanya memerintahkan 'bahawa Plaintif Pertama hendaklah mendapatkan balik pemilikan ...' dan 'bahawa Defendan-defendan diperintahkan untuk mengosongkan Hartanah-hartanah tersebut ...' dan tidak ada Perintah Mahkamah untuk sebarang perobohan.

(16) Satu Deklarasi bahawa perobohan 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman pada 25hb Julai 2015 adalah melanggari Artikel 11 Perlembagaan Persekutuan.

(17) Satu Deklarasi bahawa perobohan 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman adalah satu perbuatan jenayah menurut Seksyen 295, 296, 297, 298, 441 dan 506 Kanun Keseksaan dibaca bersama dengan Artikel 11 Perlembagaan Persekutuan.

(18) Bahawa Peguam Negara Malaysia mendakwa Pengarah-pengarah Plaintif Lim Leong Wouh (No. K.P: 640103-08-5197), Dind Chee Ling (No. K.P: 790827-08-5620), Ng Bing Tiam @ Goh Kee Sang (No. K.P: 450605-08-51498), Yee Hock Ming (No. K.P: 640606-08-6781) dan Pemegang Surat Kuasa Wakil Tan Kooi Ming @ Tam Kook Ming (No. K.P: 470212-08-5947) dengan pertuduhan-pertuduhan di bawah Seksyen 295, 296, 297, 298, 441 dan 506 Kanun Keseksaan dibaca bersama dengan Artikel 11 Perlembagaan Persekutuan.

(19) Satu Deklarasi bahawa termasuk 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman tidak ada Kuil Hindu yang haram di Malaysia menurut Artikel 11 dan dibaca bersama dengan Artikel 8 Perlembagaan Persekutuan sebagaimana tidak ada Surau atau Masjid yang haram di Malaysia.

(20) Bahawa Plaintif-Plaintif dan/atau Pemegang Surat Kuasa Wakil Tan Kooi Ming @ Tam Kook Ming (No. K.P: 470212-08-5947) membina balik 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman di tapak asal pada harga RM3,000,000.00, membayar RM100,000.00 untuk 'consecration ceremony', RM10,000.000.00 sebagai gantirugi teladan dan memberikan dua(2) ekar tanah dari tanah yang didaftarkan di atas namanya iaitu Hakmilik GM 54, Lot No 448, Mukim Batu, Kepong Rly Line, 8*th* Mile dan/atau GM57, Lot No 449, Mukim Batu, Segambut, Kuala Lumpur. (selepas daripada ini dirujuk sebagai 'hartanah-hartanah tersebut' dan memohon dan mendapatkan Suratan Hakmilik Tanah berasingan (separate title) di atas nama Kuil Sri Nagakanni Amman, kesemuanya dalam tempoh enam(6) bulan dari tarikh Perintah disini.

(21) Satu Deklarasi yang perobohan Kuil dan rumah-rumah Defendan yang ke Enam seperti dalam Memorandum Kehadiran yang bertarikh 7hb Julai 2014 adalah melanggari dan melampaui Polisi Kerajaan di bawah Skim Pemilikan Perumahan Pekerja-pekerja Ladang Tun Razak - 1973) (Tun Razak Estate Workers Housing Scheme - 1973).

(22) Bahawa Plaintif dan/atau Pemegang Surat Kuasa Wakil Tan Kooi Ming @ Tam Kook Ming (NO. K.P: 470212-08-5947) membayar pampasan sebanyak RM250,000.00 seorang kepada Defendan yang ke Enam seperti dalam Memorandum Kehadiran yang bertarikh 7hb Julai 2014.

(23) Bahawa kos prosiding dan permohonan ini dibayar oleh Plaintif dan/atau Pemegang Surat Kuasa Wakil Tan Kooi Ming @ Tam Kook Ming (NO. K.P: 470212-08-5947) kepada Krishnan a/l Subramaniam (NO. K.P: 620621-10-6455) sebagai Sami dan Penjaga 'Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman atas dasar Peguamcara dan anakguam.

(24) Sebarang Perintah lanjut dan relif lain yang dianggap wajar dan adil oleh Mahkamah yang Mulia ini.

[14] The grounds raised in support of the application were as follows:

(a) Saman Pemula Mahkamah Tinggi Kuala Lumpur NO: 24NCVC-778-05/2014 yang bertarikh 28hb Mei 2014 telah dimulakan dan difailkan oleh Plaintif-Plaintif disini yang adalah cuma merupakan pemberi Surat Kuasa Wakil.

(b) Saman Pemula ini sepatutnya dimulakan dan difailkan oleh Pemegang Surat Kuasa Wakil iaitu Tan Kooi Ming @ Tam Kook Ming.

(c) Oleh yang demikian keseluruhan guaman Sivil ini, segala prosiding-prosiding dan Perintah-perintah Perlaksanaan selepas daripada itu adalah batal dan tidak sah dari permulaannya lagi (ab initio).

(d) Relif yang perobohan Kuil ini dan rumah-rumah Defendan di sini adalah melanggari dan melampaui Perintah Mahkamah Tinggi Kuala Lumpur yang bertarikh 8hb September 2014 yang telah hanya memerintahkan

'bahawa Plaintif Pertama hendaklah mendapatkan balik pemilikan ...' dan 'bahawa Defendan-Defendan diperintahkan untuk mengosongkan Hartanah-hartanah tersebut ...' dan tidak ada Perintah Mahkamah untuk sebarang perobohan.

(e) Namun demikian Kuil Hindu tersebut dan juga rumah-rumah Pihak Defenden di sini telah dirobohkan and is continuing 'with impunity' dan melanggari Perintah Mahkamah tersebut.

(f) Oleh yang demikian Cadangan Perlaksanaan oleh Bailif Siti Aishah Bt Lasa dan/atau mana-mana Bailif pada 30hb September 2015 harus diketepikan/dibatalkan.

(g) Pemohon disini diberikan Penangguhan Perlaksanaan selanjutnya (Stay of Execution) sehingga pelupusan muktamad Guaman Sivil ini.

(h) Bailif Siti Aishah Bt Lasa dan/atau mana-mana Bailif dan/atau Plaintif-Plaintif dan/atau Polis Di Raja Malaysia dan/atau Dewan Bandaraya Kuala Lumpur dan/atau ajen/pengkhidmat/pekerja/gangster Plaintif-Plaintif termasuk gangster Raja a/l Govindaraju dilarang memasuki, mengusik (tamper), menghalang laluan masuk ke dan/atau merobohkan Kuil Sri Nagakanni Amman dan rumah-rumah/bangunan Defendan disini sehingga pelupusan muktamad Guaman Sivil ini.

(i) Permohonan kepentingan awam untuk Satu Deklarasi yang tidak ada Kuil Hindu yang haram di Malaysia menurut Artikel 11 dan dibaca bersama dengan Artikel 8 Perlembagaan Persekutuan sebagaimana tidak ada Surau atau Masjid yang haram di Malaysia.

(j) Perobohan Historical and ancestral 130 year old' Kuil Sri Nagakanni Amman disini adalah melanggari dan melampaui 'Federal Territories Ministerial Statement in Parliament in 2008 that no more Hindu Temples would be demolished in the future (New Straits Times 11/7/2008 at page 13)'.

(k) Perobohan Kuil, rumah-rumah Defendan yang ke Enam disini adalah melanggari dan melampaui Polisi Kerajaan dibawah Skim Pemilikan Perumahan Pekerja-pekerja Ladang Tun Razak - 1973) (Tun Razak Estate Workers Housing Scheme - 1973).

[15] The affidavit in support of the application in encl 38 was affirmed by one Viknesh a/l Krishnan ('Viknesh'). The deponent declared that he was one party of the sixth defendants and was also affirming the affidavit on behalf of the part of the sixth defendants who had filed the memorandum of appearance on 7 July 2014.

[16] The same Viknesh claimed that he is a priest and caretaker of the Nagakanni temple. He is also the son of one Krishnan a/l Subramaniam who is the main priest and also the caretaker of the same temple.

[17] In his affidavit, Viknesh set out in some detail the historical origins and popularity of the temple as follows:

> Saya menyatakan yang terdapat lebih kurang lima ratus orang penganut bagi Kuil Hindu ini yang terletak di atas Hakmilik GM54, Lot No 448, Mukim Batu, Kepong Rly Line, 8th Mile dan/atau GM 57, Lot No 449, Mukim Batu, Segambut Kuala Lumpur. (selepas daripada ini dirujuk sebagai 'hartanah-hartanah tersebut" yang dituntut oleh Plaintif-Plaintif disini)
>
> Krishnan a/l Subramaniam (NO. K.P: 620621-10-6455) iaitu ayah saya telah dilahirkan pada 21/6/1962, dibesarkan dan bekerja sebagai penoreh getah di Ladang Segambut ini. Sijil Kelahiran ayah saya mencatatkan alamat rumah ayah saya sebagai '4 1/2 ML SEGAMBUT ESTATE SELANGOR'. Ibu ayah saya mendiang Puan Theyvanai a/p Sinniah (No. K.P: 401210-04-5184) dan nenek moyang kami adalah Sami merangkap Penjaga 'of this 130 year old historical and ancestral Hindu Temple' yang telah turut diberikan tapak tanah dan/atau kebenaran sejak dari zaman sebelum kemerdekaan lagi oleh pihak penjajah British dan kemudiannya Semantan Estate (1952) Sdn Bhd dan begitulah juga pemilik-pemilik tanah selepas daripada itu. Sesalinan Sijil Kelahiran ayah saya dan Sijil Kematian ibu ayah saya tersebut dan juga surat dari Semantan Estate (1952) Sdn Bhd yang bertarikh 11hb Januari 1979 dilampirkan bersama di sini secara kolektif sebagai 'Ekshibit V-1'.
>
> Saya menyatakan disini yang pada 1hb Mei setiap tahun dan terakhir sekali pada 1hb Mei 2015 Perayaan Tahunan (Thiruvela) Kuil Hindu ini dijalankan secara aman, damai dan harmoni 'in bringing together in worship some five hundred (500) former rubber tappers/estate workers and their families.
>
> Saya 'maintain that rightly like any surau or masjid, no Hindu Temple is illegal in Malaysia by virtue of Article 11 (Freedom of Religion) and read with Article 8 (Equality before the law) of the Federal Constitution with the difference being permanent land titles/gazettes were/are not issued by the very powerful governments to Hindu Temples like that of our temple today.

[18] The said application was opposed by the plaintiffs on grounds that can be summarised as follows:

(a) the applicant have no locus standi to file the said application;

(b) the court has become functus officio after granting the OS via order dated 8 September 2014; and

(c) the doctrine of res judicata applied against the defendants and their rights in respect of the said land had been heard and disposed of by the High Court.

DECISION OF THE HIGH COURT

[19] The application in encl 38 was by this time heard before a different judge, Judicial Commissioner Tuan S Nantha Balan. In a nutshell, the learned

JC observed that the thrust of the application was really the preservation/restoration of the Nagakanni temple.

[20] The learned judicial commissioner found that this issue is barred by res judicata as the Nagakanni temple and another temple, Kuil Mahakarumariamman, had previously made an unsuccessful attempt to be added as parties. The learned JC also held that since they were not added as parties, the defendants have no locus standi in the proceedings. The court was also functus officio. The defendants are now appealing against this order.

OUR DECISION

[21] On the question of locus standi, it was conceded by learned counsel for the appellants that the parties in the application in encl 38 are the very same parties who had filed the memorandum of appearance on 7 July 2014 and who later filed encl 21 to have themselves added as parties pursuant to O 89 r 5 of the ROC 2012.

[22] Order 89 r 5 of the ROC 2012 states as follows:

> 5 Application by occupier to be made a party (O 89 r 5)
>
> Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.'

[23] This court in *Puncak Klasik*, had occasion to interpret O 89 r 5 and ruled as follows (at p 766):

> From the above, it is clear to us that an unnamed person has no *locus standi* until he identifies himself by name and applies to the court to be joined as a defendant. He could do so at any stage of the proceedings. Until he does so, he is a non-identify and he has no locus standi.

[24] In the instant case, it is not disputed that the defendants/appellants have failed to specifically identify themselves. Beside the deponent of the affidavits, none of the identities of the appellants were revealed. We agree that merely filing the memorandum of appearance is insufficient for the parties to have a right of hearing. Unless dispensed with by the court, they must apply to be added as parties before they can apply for any relief in the proceedings. Since there was no such application, the defendants/appellants had no legal standing in the proceedings. On this ground alone, the appeal must fail.

[25] In any event, as was set out earlier, the same parties had applied by way of encl 21 to be added as parties pursuant to O 89 r 5 of the ROC 2012. This

application was dismissed. An appeal was filed but later withdrawn. The defendants/appellants could not therefore apply again as they would be barred by the doctrine of res judicata. If they had wanted to be heard, the appellants ought to have pursued their rights in the appeal they had filed. Unfortunately that appeal was withdrawn.

[26] Allegations that their previous solicitors had 'jumped ship' and sided with the developers is not helpful. From the police reports filed in these proceedings, it appeared that some form of compensation was paid and may perhaps have not reached the defendants/appellants here.

[27] In any case, according to the plaintiffs, a parcel of land was allocated to the Nagakanni temple on Lot No 448 although the deponent Viknesh had described the 20 feet by 30 feet structure that had been built by the plaintiffs as resembling a 'car wash'. As the learned JC had noted, it is up to the defendants/appellants to accept the structure built by the plaintiffs.

[28] The defendants/appellants have also raised various other issues in the appeal but similarly, these issues had already been raised or could have been raised in the earlier proceeding. They are now barred by res judicata as there must be some finality to litigation.

[29] On the question of res judicata, this court in *Hartecom JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57 held that once a judge makes a ruling, substantive or procedural, final or interlocutory, it must be adhered to and may not be reopened.

[30] It is trite law that the res judicata principle is premised on giving finality to judicial decisions. The purpose of achieving finality in litigation will be undermined if parties can willy-nilly re-open litigation after a matter had been decided between the parties to a suit.

[31] The court may, however, in exceptional cases decline to apply the res judicata principle if its application would lead to an unjust result (*Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd* [2001] 4 MLJ 346). Unfortunately, this argument was not properly canvassed before the court. The appellants were instead focused substantially on non-legal arguments concerning the preservation of the Nagakanni temple as can be seen in the declarations sought and the grounds raised as set out earlier.

CONCLUSION

[32] In the circumstances, and for the reasons we have stated, we find no appealable error on the part of the High Court to warrant appellate

intervention. The appeal is accordingly dismissed with no order as to costs. The order of the High Court is affirmed. Deposit to be refunded to the appellants.

Appeal dismissed and order of High Court affirmed.

Reported by Dzulqarnain Ab Fatar